17165
11L

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 301.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, COUNT AND PRINCE OF BEARN AND CHALAIS, APPELLANT,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN BONDING COMPANY OF BALTIMORE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED JULY 13, 1912.

(23,292)

(23,292)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 301.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, COUNT AND PRINCE OF BEARN AND CHALAIS, APPELLANT,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN BONDING COMPANY OF BALTIMORE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print
Caption	1	1
Bill of complaint	2	1
Subpœna and return	11	7
Demurrer of American Bonding Company	13	8
Demurrer of Alexander Brown and Sons	15	9
Demurrer of Safe Deposit and Trust Company of Baltimore	17	10
Demurrer of Theodore P. Weis, sheriff of Baltimore	18	11
Opinion of court	20	12
Final decree	28	17
Petition for appeal	30	18
Order allowing appeal	31	18
Assignment of errors	32	19
Appeal bond	36	21
Citation and service	41	25
Stipulation of counsel as to making up transcript of record	42	26
Order to transmit record	44	27
Clerk's certificate	44	27

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1913.

1 UNITED STATES OF AMERICA,
District of Maryland, To wit:

At a District Court of the United States in and for the District of Maryland, Begun and Held in the City of Baltimore on the First Tuesday in March (Being the Fifth Day of the Same Month), in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present: The Honorable Thomas J. Morris, Judge Maryland District; John C. Rose, Judge Maryland District; John Philip Hill, Esq., Attorney; George W. Padgett, Esq., Marshal; Arthur L. Spamer, Clerk.

Among other were the following proceedings to wit:

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr. and Harman Brown Bell, Co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Defendants.

2 *Bill of Complaint.*

Filed April 16, 1912.

In the United States District Court, for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr. and Harman Brown Bell, Co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Defendants.

To the Honorable, the Judges of the District Court of the United States in and for the District of Maryland:

Your orator, humbling complaining, shows:

I. That at all the times hereinafter mentioned your orator was

and still is a citizen of the French Republic and a resident and inhabitant of the City of Paris in said Republic, and since the month of August 1910 has been and still is stationed at Pekin, China as Secretary of the Legation of the French Republic at Pekin and was and still is accredited as such.

3 II. That at all the times hereinafter mentioned the defendant the Safe Deposit and Trust Company of Baltimore was and still is, as your orator is informed and believes, a corporation organized under the laws of the State of Maryland and a citizen and inhabitant of said State and of this district, having its principal office in this district.

III. That the defendant Theodore P. Weis is, as your orator is informed and believes, a citizen, resident and inhabitant of the City of Baltimore in the State of Maryland and Sheriff of the City of Baltimore in the State of Maryland, in this district.

IV. That the defendants Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, were at all the times hereinafter mentioned and still are co-partners trading as Alexander Brown and Sons and citizens, residents and inhabitants of the State of Maryland and of this district.

V. That the defendant American Bonding Company of Baltimore was at all the times hereinafter mentioned and still is a corporation of the State of Maryland and a citizen and inhabitant of said State and of this district, having its principal office in this District.

VI. That a sum upwards of Three Thousand Dollars ($3,000) is involved in this action.

VII. That at all the times hereinafter mentioned your orator was and still is the owner of debt of the par value of One hundred and fifty-six thousand Dollars ($156,000) of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized under the laws of the State of Wisconsin and of debt of the par value of Twenty-nine thousand Dollars ($29,000) of the New York Central and Hudson River Railroad Company, a corpora-

4 tion organized under the laws of the State of New York, which said debts were and still are evidenced by certain bonds of the respective railroad companies named of the par value of One Thousand Dollars ($1,000) each, which said bonds are not negotiable but are evidences that said debts were and are registered upon the books of the respective corporations as follows:

$15,000 New York Central & Hudson River Railroad Company 3½% bonds due July 1st, 1997, numbered 32804-13, 45622, 45786-9, registered in the name of Henry Ross Joseph Gaston de Galard de Bearn, your orator's infant son;

$14,000 New York Central & Hudson River Railroad Company 3½% bonds due July 1st, 1997, numbered 45790, 45792, 45797-808, registered in the name of Beatrice Neva Marie Cecile de Galard de Bearn, your orator's infant daughter;

$78,000 Chicago, St. Paul, Minneapolis & Omaha Railway Company 6% bonds due July 1st, 1930, numbered 22573-650, registered in the name of Henry Ross Joseph Gaston de Galard de Bearn, your orator's infant son;

$78,000 Chicago, St. Paul, Minneapolis & Omaha Railway Company 6% bonds, duly July 1st, 1930, numbered 20666-8, 21293, 22173, 22468, 22501-72, registered in the name of Beatrice Neva Marie Cecile de Galard de Bearn, your orator's infant daughter.

VIII. That by contract, to wit: by the express terms of the respective mortgages or deeds of trust under which such debts have been contracted and are due and outstanding, to which said mortgages or deeds of trust respectively reference is made in the several bonds evidencing such debts, and which provide among other things that any transfer of the title to the said debts other than such transfer upon the books of the said corporations respectively in
5 the City, County and State of New York, is invalid and void, the title to the aforesaid debts of the corporations named was at all the times hereinafter mentioned and still is transferrable only upon the books of the said corporations respectively in the City, County and State of New York.

IX. That at all the times hereinafter mentioned, the said registered bonds were and still are in a safe deposit box in the vault of the Safe Deposit and Trust Company of Baltimore, where your orator, by means of a guardianship proceeding in the Orphans' Court of Baltimore which has since been declared illegal and void, was induced to place said bonds, said box being rented and standing recorded on the books of the said safe deposit Company in the joint names of Messrs. Alexander Brown & Sons and the American Bonding Company; that for the purposes of such guardianship proceeding your orator had in the year 1908 been required by the said American Bonding Company as surety on your orator's bond in said guardianship proceeding to agree not to remove the said bonds without the consent of said surety; and had further been required by said surety to consent that said surety and said Alexander Brown and Sons should only have joint access to said bonds and the same for the sole purpose of enabling said Alexander Brown and Sons to remove interest warrants from said bonds during the said guardianship and forward the same for payment to the City of New York as they became due.

X. That in December 1909 the Court of Appeals of Maryland by a decree founded upon personal jurisdiction over all the parties to said guardianship proceeding declared the said guardianship and certain releases given by your orator in connection therewith null and void; that by said adjudication, the said suretyship of the said American Bonding Company of Baltimore was extinguished and that neither said Bonding Company nor said Alexander Brown and Sons have since said adjudication had any right of access to or other right or control whatsoever in, over or as to said safe deposit
6 box and the contents of the same and said adjudication has established the lack of jurisdiction over said property on the part of the Courts which had so undertaken to deal therewith.

XI. That your orator is entitled to the immediate possession of the said evidences of debt, to wit: registered bonds for all purposes and is in urgent need of them for the purpose of causing said debts to be transferred upon the books of the debtor corporations in the State of New York to the name of your orator or at his option of surrendering said bonds to the said corporations respectively in exchange for the issuance to your orator of other evidences of said debts, to take the place of said bonds now so registered, as he would have done in the year 1908 but for the illegal guardianship proceeding already referred to.

XII. That your orator has been since the month of October 1908 and still is the true lessee of said box the rental of which has been paid with funds furnished by your orator and as above shown at all times owner of the contents thereof; that said Alexander Brown and Sons have not been and are not in any manner responsible either for said box or for the custody of the contents of the same or in or for any matter growing out of the arrangement under which said box was rented and said registered bonds placed therein; that as to the American Bonding Company, it has had no connection with or interest in the rental of said box or the custody of the contents of the same except as surety of your orator upon his bond as guardian, which said suretyship was undertaken in the aforesaid illegal guardianship proceeding which has been declared void and set aside; that at or about the time of the rental of said box and the placing therein of the said registered bonds, your orator subscribed and caused to be delivered to the said Alexander Brown and Sons a writing in the form of a letter addressed to them, dated that day, to which said writing the said American Bonding Company had caused to be
7 subscribed the word "approved" and its name by its secretary and treasurer, which said writing is as follows:

"BALTIMORE, *October 28th*, 1908.

"Messrs. Alexander Brown & Sons, Baltimore, Md.

"GENTLEMEN: I have made arrangements with the American "Bonding Company of Baltimore (my bondsman, as guardian of "the estates of Henry Ross Joseph Gaston de Bearn and Beatrice "Neva Cecile Marie de Bearn), whereby I am to deposit in a box in "the vault of the Safe Deposit & Trust Company, the following "securities, which we have agreed that neither is to remove without "the written consent of the other:

"$15,000 New York Central & Hudson River Railroad 3½% "bonds.

"$78,000 Chicago, St. Paul, Minneapolis & Omaha Railroad 6% "bonds, registered in the name of Henry Ross Joseph Gaston de "Galard de Bearn, and

"$14,000 New York Central & Hudson River Railroad 3½% "bonds.

"$78,000 Chicago, St. Paul, Minneapolis & Omaha Railroad 6% "bonds, registered in the name of Beatrice Neva Marie Cecile de "Galard de Bearn.

"This box in the *value* of the Safe Deposit & Trust Company is

"to be opened only in the joint presence of an officer of the Ameri-
"can Bonding Company and a member of your firm.

"You are to cut the coupons from the bonds as they mature, and
"after retaining from the proceeds a commission to yourself of one-
"half per cent. on amounts collected, and $500 per annum to be
"paid to the American Bonding Company as premium on my bond,
"the balance is to be made subject to my check as Guardian. Your
"responsibility is to be limited to the clipping of coupons and credit-
"ing the same, and you are to be in no manner responsible for the
"custody of the bonds or for any other matter connected with or in
"any way growing out of the above arrangement.

"It is understood also that you shall have the right to terminate
"your employment in this matter at any time upon reasonable notice
"to myself and the American Bonding Company.

"Very truly yours,

"(Signed) PRINCE DE BEARN ET DE CHALAIS.

"Approved:

"(Signed) AMERICAN BONDING COMPANY,

"By WILLIAM E. DUVALL,

Secretary and Treasurer."

That as your orator is informed and believes, said American Bonding Company of Baltimore, and said Alexander Brown and Sons make no claim as to said box or personal claim as to its contents antagonistic to your orator; that your orator makes no personal claim herein against said American Bonding Company and said Alexander Brown and Sons, but that your orator is unable to secure access to said box and to withdraw its contests except by virtue of and under a decree in equity such as is applied for herein, as hereinafter shown; and that your orator is advised that such decree is likewise necessary to protect the Safe Deposit and Trust Company as landlord and as controlling physical access to said box against liability in the premises as hereinafter shown.

8 XIII. And your orator further shows that the defendant sheriff has filed in the Superior Court of Baltimore, a Court of law of the State of Maryland, returns to certain writs of attachment stating that he has seized the aforesaid particular debts under such writs issued out of said Court in five suits brought by divers non-residents of the State of Maryland against your orator upon the ground of your orator's non-residence in said State to recover upon divers claims alleged to have arisen out of said State; that the said proceedings of the said defendant Sheriff under said writs purporting under color of the attachment statutes of Maryland and of said writs to seize said debts which are owned by your orator in the State of New York, are illegal and void; that your orator has not been personally served with process in said suits; that said debts have not and cannot be seized under said writs not being property in the State of Maryland; that the defendant sheriff by his said proceedings under said writs has attempted and is attempting to interfere with said box and its contents and to encumber your orator's title to said particular debts and has sought and is seeking to deprive you

orator of his property and of the effective control thereof and of the use thereof without due process of law and to deprive your orator of the equal protection of the laws in violation of the Constitution of the United States and particularly of Section I. of the fourteenth amendment thereto; that said Superior Court of Baltimore City has no personal jurisdiction over your orator and has not gained jurisdiction over the aforesaid box or its contents or over the debts owned by your orator in the State of New York, and the said defendant Sheriff has no lawful authority to impede or seek to impede or hinder your orator in the premises nor to do any act tending to defeat your orator's control of the said debts or the evidences thereof or to prevent your orator from securing the relief applied for herein, and which this Court has jurisdiction to grant your orator, and that the said unlawful proceedings of the said Sheriff under color of
9 said writs will, if persisted in, constitute an unlawful interference with the jurisdiction of this Court in the premises.

XIV. That your orator has no adequate remedy at law.

To the end, therefore, that your orator shall not, under color of any law, statute, regulation, custom or usage of the State of Maryland, be deprived of the rights, privileges and immunities secured to him as aforesaid by the Federal Constitution.

1. That it be decreed and determined that your orator is the true lessee of said box and entitled to secure access to the same and withdraw the contents thereof either in person or by his duly authorized representative.

2. (*a*) That the Sheriff be enjoined and restrained from in any manner interfering with the said box and its contents;

(*b*) That pending this action he be so enjoined that this Court be not hindered in its jurisdiction over this cause.

3. That your orator have such other and further relief as to the Court may seem just in the premises.

May it please your honors to grant unto your orator not only the writ or writs of injunction conformable to the prayer of this bill but also the writ or writs of subpœna of the United States directed to the said defendants the Safe Deposit and Trust Company of Baltimore, the American Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, therein and thereby commanding them and each of them to appear in this Court at a certain day to be therein named to answer the premises and abide by and perform such orders and decrees as may be passed therein.

Baltimore April 16th, 1912.

PRINCE DE BEARN ET DE CHALAIS,
By MAURICE LEON, *Solicitor.*

10 UNITED STATES OF AMERICA,
State of Maryland, City of Baltimore, ss:

On this 16th day of April, 1912, before me personally appeared Maurice Leon, attorney-in-fact for the complainant in the above entitled cause, who being by me duly sworn as to the truth of the alle-

gations made in the above bill, says: that he has read the foregoing bill and knows the contents thereof and that the same is true of the best of his knowledge, information and belief; that the reason why this verification is made by deponent instead of by complainant is that this deponent is the duly authorized attorney-in-fact of the complainant who is at present without the United States of America.

MAURICE LEON.

Subscribed and sworn to before me the day and year first above written.

ARTHUR L. SPAMER,
Clerk of the District Court of the United States
for the District of Maryland.
By CHAS. W. ZIMMERMANN, *Deputy.*

11 *Subpœna.*

Issued April 16, 1912.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Safe Deposit and Trust Company of Baltimore, American Bonding Company, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, as sheriff of the city of Baltimore, in the State of Maryland, Greeting:

You are hereby commanded that all excuses and delays — set aside you be and appear at the Clerk's office of the District Court of the United States for the District of Maryland on the first Tuesday in May next, to answer unto the bill of complaint of Louis Elie Joseph Henry De Galard De Brassac De Bearn, Count and Prince of Bearn and Chalais in said court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable John C. Rose, Judge of the District Court of the United States for the District of Maryland the 16th day of April in the Year of Our Lord, 1912.

Issued 16th day of April, 1912.

[SEAL OF COURT.] ARTHUR L. SPAMER, *Clerk.*

MEMORANDUM.—The defendants are required to enter their appearance in the suit in the Clerk's Office on or before the first Tuesday of May next; otherwise the Bill may be taken pro confesso.

12 *Marshal's Return Attached to Above Subpœna.*

Summoned the Safe Deposit & Trust Company of Baltimore, by service on H. H. M. Lee, its Secretary, also summoned the American Bonding Company, by service on G. L. Radcliffe, its 2nd Vice President, also summoned Alexander Brown, Austin McLanahan, B.

Howell Griswold, Jr., and Herman Brown Bell, copartners, trading as Alexander Brown & Sons, by service on Herman Brown Bell, a member of said firm, also summoned Theodore P. Weis as Sheriff of the City of Baltimore, and copy of Subpœna in Equity left with each of them, at Baltimore, Maryland, April 16, 1912.

GEORGE W. PADGETT,
U. S. Marshal.

13 *Demurrer of American Bonding Company of Baltimore.*

Filed May 24, 1912.

In the United States District Court for the District of Maryland.

(In Equity.)

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, Trading as Alexander Brown and Sons, and Theodore P. Weis, as Sheriff of the City of Baltimore, in the State of Maryland.

The Demurrer of the American Bonding Company of Baltimore to the Bill of Complaint, filed in the above case.

This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the said Bill of Complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill. And for cause of demurrer showeth:

(1) That it appears by the plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against this defendant.

(2) That it appears by the said Bill that there are divers other persons who are necessary parties to the said bill, but who are not made parties thereto.

14 (3) That it appears by said Bill that the bonds therein mentioned are now in the possession and under the control of the Superior Court of Baltimore City.

This Court, therefore, is without jurisdiction to, and will not grant the relief prayed.

Wherefore and for divers other causes of demurrer appearing on the said bill, this defendant doth demur thereto. And it prays the judgment of this Honorable Court, whether it shall be compelled to make any answer to the said bill; and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

EDW'D DUFFY,
Solicitor for American Bonding Company of Baltimore.

I hereby certify that the aforegoing demurrer is in my opinion well founded in point of law.

EDW'D DUFFY,
Solicitor for American Bonding Company of Baltimore.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this 24th day of May in the year Nineteen Hundred and Twelve, personally appeared before me, a Notary Public of the State of Maryland in and for Baltimore City aforesaid, duly commissioned and qualified, George L. Radcliffe, and made oath in due form of law that he is the Vice-President of the American Bonding Company of Baltimore, and that the aforegoing demurrer is not interposed for delay.

Witness my hand and notarial seal.

[NOTARY'S SEAL.] MILLARD LEONARD,
Notary Public.

15 *Demurrer of Alexander Brown and Sons.*

Filed May 28, 1912.

In the United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, Trading as Alexander Brown and Sons, and Theodore P. Weis, as Sheriff of the City of Baltimore, in the State of Maryland.

The Demurrer of Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, co-partners, trading as Alexander Brown & Sons, to the Bill of Complaint, filed in the above case.

These defendants by protestation, not confessing or acknowledging all or any of the matters or things in the said Bill of Complaint contained to be true in such manner and form as the same are therein set forth and alleged, to demur to the said bill. And for cause of demurrer show:

(1) That it appears by the plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against these defendants.

(2) That it appears by said Bill that the bonds therein mentioned have been attached in divers suits brought in the Superior Court of Baltimore City, and that said suits are still pending therein.

16 (3) That it appears by the said Bill that there are divers other persons who are necessary parties to the said bill but who are not made parties thereto.

Wherefore and for divers other causes of demurrer appearing on the said bill, these defendants do demur thereto. And these defendants pray the judgment of this Honorable Court, whether they shall be made to make any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

GRISWOLD & MARSHALL,
Solicitors for Alexander Brown & Sons.

We hereby certify that the aforegoing demurrer is in our opinion well founded in point of law.

GRISWOLD & MARSHALL,
Solicitors for Alexander Brown & Sons.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this 28th day of May, 1912, before me a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid, personally appeared Harman Brown Bell who made oath in due form of law that he is one of the partners in the firm of Alexander Brown and Sons with authority to make this affidavit, and that the aforegoing demurrer is not interposed for delay.

Witness my hand and Notarial Seal.

[NOTARY'S SEAL.] E. GILL BOWLING,
Notary Public.

17 *Demurrer of Safe Deposit and Trust Company of Baltimore.*

Filed May 31, 1912.

In the United States District Court for the District of Maryland.

In Equity.

PRINCE DE BEARN
vs.
SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE et al.

And the defendant, the Safe Deposit and Trust Company of Baltimore, by leave of court having withdrawn its answer heretofore filed to the bill in the above cause, demurs to the whole of said bill, and for ground of demurrer shows:

1. That the plaintiff has not stated in his said bill such a case as to entitle him to any relief in equity against this defendant.

2. Because it appears from said bill that the plaintiff has not made the plaintiffs in the attachment cases referred to in said bill, parties to this cause, and the said plaintiffs are indispensable parties to this cause for the relief prayed in said bill.

3. And because this Honorable Court is without jurisdiction to enjoin the prosecution of the attachment cases pending in the Superior Court or the seizure or sale of the bonds mentioned in said bill.

VENABLE, BAETJER & HOWARD,
Solicitors for Safe Deposit and Trust Company of Baltimore.

18 *Demurrer of Theodore P. Weis, Sheriff of Baltimore.*

Filed May 31st, 1912.

In the United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, Trading as Alexander Brown and Sons, and Theodore P. Weis, as Sheriff of the City of Baltimore, in the State of Maryland.

The Demurrer of Theowore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, filed in the above proceedings in lieu of the answer heretofore filed, leave to with-draw which hath already been granted by this Honorable Court, respectfully shows:

(1) That it appears by Plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against this defendant.

(2) That it appears by the said bill that there are divers other persons who are necessary parties to the said bill; but who are not made parties thereof.

(3) That it appears by said bill that the bonds therein mentioned are now in the possession and under the control of the Superior Court of Baltimore City. This Court, therefore is without jurisdiction to, and will not grant the relief prayed.

19 Wherefore and for divers other causes of demurrer appearing on the said bill, this Defendant doth demur thereto, and prays the judgment of this Honorable Court, whether it shall be compelled to make any answer to the said bill; and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

WM. C. SMITH,
Solicitor for Theodore P. Weis,
Sheriff of the City of Baltimore.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this 3rd day of June, 1912, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared Theodore P. Weis, Sheriff of the City of Baltimore, and made oath in due form of law that the matters and facts contained in the foregoing demurrer are true, and that said demurrer is not intended for delay.

As witness my hand and Notarial Seal.

[NOTARY'S SEAL.] AUGUSTUS W. BRADFORD,
Notary Public.

20 *Opinion of the Court.*

Filed June 3, 1912.

In the United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,
vs.
SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, Trading as Alexander Brown and Sons, and Theodore P. Weis, as Sheriff of the City of Baltimore, in the State of Maryland, Defendants.

ROSE, *District Judge:*

The defendants have demurred to the bill of complaint. In so far as its allegations are well pleaded, they are upon this hearing to be taken as true. They are in substance as follows:

The complainant is a citizen of the French Republic. The individual defendants are citizens of Maryland. The corporate defendants are corporations of that State. The amount in controversy exceeds $3,000. The complainant is the owner of some $156,000 of debts of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, a Wisconsin corporation, and of $29,000 of debts of the New York Central and Hudson River Railroad Company, a New York corporation. These debts are evidenced by bonds. The bonds are registered in the name of one or the other of the complainant's infant children. These bonds are secured by deeds of trust.

21 By their terms any transfer of title to these bonds shall be invalid and void unless made upon the books of said corporations, respectively, in the City, County and State of New York.

On or prior to October 28, 1908, the complainant had been appointed by the Orphans Court of Baltimore City guardian for his two children. These evidences of debts were then supposed to be-

long to them. He was required to give bond as guardian. The defendant, the American Bonding Company of Baltimore, agreed to become his surety thereon. The terms of such agreement were set forth in a letter written by the complainant to the defendants, Alexander Brown & Sons. This letter was approved by the American Bonding Company. In it the complainant said the bonds had been placed in a box in the vaults of the defendant, the Safe Deposit and Trust Company of Baltimore. He promised not to remove the bonds therefrom without the consent of the American Bonding Company. Access to the box was restricted to the last named company and Alexander Brown & Sons jointly. It was given for the sole purpose of allowing the latter to remove interest warrants from the bonds during the guardianship and to forward the same to New York for payment. In December 1909 the Court of Appeals of Maryland, at the suit of the complainant, declared the said guardianship and certain releases given in connection therewith, null and void.

Prince de Bearn vs. Winans, 111 Md., 434.

By such decree the suretyship of the American Bonding Company was extinguished and with it the sole purpose for which the bonds were placed in the custody of the American Bonding Company and Alexander Brown & Sons. The complainant became entitled to the immediate possession of said evidence of debts. He has urgent need of them. Five suits have been brought against the complainant in the Superior Court of Baltimore City. The plaintiffs in all those cases are non-residents of the State of Maryland. The claims upon which they are brought arose outside of that State. On the ground of the complainant's non-resi-
22 dence, the plaintiffs in these suits caused writs of attachment to issue out of said court directed to the defendant sheriff. The last named made return upon said writs that he has seized thereunder the particular debts or bonds. The complainant has not been personally served with process in said suits. The American Bonding Company and Alexander Brown & Sons make no claim to the box or personal claim to its contents antagonistic to the complainant. Because of such action upon the part of the sheriff complainant is unable to secure access to said box or to remove its contents. Complainant makes no personal claim against the American Bonding Company or Alexander Brown & Sons. He joins the Safe Deposit and Trust Company as defendant merely to obtain against it a decree which will protect it as landlord and as controlling physical access to said box against liability in the premises.

As conclusions of law from the facts above stated, the complainant alleges that the proceedings of the defendant sheriff under said writs purporting under color of the attachment statutes of Maryland and of said writs to seize said debts which are owned by the complainant in the State of New York, are illegal and void. He says the said debts are not property in the State of Maryland and therefore have not and cannot be seized under said writs. He charges that the defendant sheriff by his proceedings under the writs

of attachment is attempting to interfere with said box and its contents and to encumber complainant's title to said particular debts, and has sought and is seeking to deprive complainant of his property and of the effective control and use thereof without due process of law, and to deprive the complainant of the equal protection of the laws in violation of the Fourteenth Amendment. He asserts that the Superior Court of Baltimore City has no personal jurisdiction over him and has not gained jurisdiction over the box or its contents or over the debts owned by the complainant in the State of New York.

23 The bill prays that the complainant be decreed to be the true lessee of the box and entitled to access to the same and to withdraw the contents thereof either in person or by his duly authorized representative; that the sheriff be enjoined and restrained from in any manner interfering with the said box and its contents, and that pending this action the sheriff be enjoined so that this Court be not hindered in its jurisdiction over this cause, and for other and further relief.

It will be necessary to consider only two of the objections which defendants make to the legal sufficiency of the bill.

They say, first, the plaintiffs in the attachment suits are indispensable parties and they have not been brought in.

Second, before the filing of the bill a State Court has assumed jurisdiction of, and was exerting control over, the property which the complainant asks this Court to put into his hands. With such jurisdiction and control, this Court it is said may not lawfully interfere.

Complainant answers in effect, that the properties upon which the sheriff has attempted to levy are debts due him. That neither he nor the corporate debtors are residents of Maryland or in any wise subject without their consent to the jurisdiction of the Courts over their persons. That by the contract between him and his debtors his rights to those debts cannot be transferred from him elsewhere than in the City of New York, a place in which the writs of the Maryland Courts will not run. It follows, he argues, that the so-called attachment proceedings are utterly void. The sheriff is a mere wrong-doer. The complainant is entitled to ignore altogether the persons at whose suit the writs issued, the Court by which they were issued, and the writs themselves. The bill itself shows that there are in Maryland certain pieces of paper called bonds which are evidences of the debts due to the complainant.

24 Without possession of these pieces of paper complainant cannot obtain the beneficial enjoyment in possession of the debts in question, because of certain writs which the State Court has issued and caused to be levied by its officer, the defendant sheriff, upon such pieces of paper and to be laid in the hands of the defendants who have either the actual physical custody of such pieces of paper or the right of access thereto. In short, the attaching creditors say those pieces of paper are attachable, and that they may by subjecting them to their attachments compel the application of the debts evidenced by such pieces of paper, to the payment

of their claims against the complainant. Complainant says they are not attachable.

It cannot be said that the contentions of the attaching creditors are so utterly unreasonable that — may be regarded as merely colorable. Apparently they have received the sanction of the highest Court of Maryland.

de Bearn vs. Prince de Bearn, 115 Md., 668.

Nevertheless, the complainant asks this Court to decide that controversy against the attaching creditors, to declare that the claims which they are asserting under the writs of attachment are without foundation, and to direct that the things upon which they have levied be taken out of the custody of the Court in which their suits are pending, and that all this shall be done in a proceeding to which they are not parties.

Whether the control over these bonds which the attaching creditors are now exercising and which it is the object of this bill to put an end to, is de jure, for the present purpose matters little. It may be presumed that they say it is. The complainant by filing the bill admits that it exists de facto. If it did not this suit would not have been brought. Before this Court may adjudge that the attaching creditors are wrong, they must have their day at its bar. The defendants here for their own protection must bring to the attention of this Coutr the fact that the plaintiffs in the attachment suit have not been made parties. If this was not done and their absence should chance to be overlooked, it might well be that such parties would not be bound by the decree. It would then afford no protection as against them to one who acted under it. In short, the attaching creditors not only have an interest in the controversy here pending, but that interest is of such a nature that a final decree cannot be made without affecting that interest or without leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience. They are therefore indispensable parties to this proceeding.

Shields vs. Barrow, 17 Howard, 139;
California vs. Southern Pacific Co., 157 U. S., 249.

This rule has been recently and rigidly applied by the Circuit Court of Appeals for this Circuit.

Baltimore, Chesapeake & Atlantic Ry. Co. vs. Godeffroy, 182 Fed., 525.

The complainant may if so advised amend his bill by making the attaching creditors parties defendant.

The second ground of objection is one which cannot be so easily gotten rid of. This Court may not take anything, be it safe deposit boxes, bonds, evidences of debt or what not, out of the custody of a State Court. The complainant does not question the general rule. He claims that is not here applicable. He says that while the Superior Court has jurisdiction to issue writs of non-resident

attachment, the things which its officer has sought to attach in this case are not attachable. It follows, he argues, that this Court may and must when properly applied to altogether ignore such void proceedings.

The Court of Appeals of Maryland has expressly decided that a Court of Equity may not assume to declare such attachments altogether nugatory.

de Bearn vs. Winans, 115 Md., 139.

See also:

26 de Bearn vs. Winans, 115 Md., 604;
de Bearn vs. de Bearn, 115 Md., 668;
de Bearn vs. de Bearn, 115 Md., 685.

It was there decided that such evidences of debt or bonds as are involved in the pending case may be attached in Maryland.

Neither the Superior Court of Baltimore City nor this Court have any control over the other. If it should be here held that the things in question were not attachable, that Court would be under no obligation to subordinate its judgment to that of this Court. A conflict of jurisdiction would follow. The rule that one Court of concurrent jurisdiction may not attempt to exercise control over anything which has previously come into and still is in the control of the other Court is intended to render such unseemly controversies impossible. The facts of this case bring it within both the letter and spirit of that rule.

If the complainant is right in asserting that these bonds are not attachable in Maryland and that any attachment of them in this State is a violation of rights secured to him by the Federal Constitution, he will not by what is here decided be denied the opportunity to have his contentions passed upon by the highest Court of the Nation. If there shall be final judgments of condemnation in the attachment cases, and those judgments shall be affirmed by the Court of Appeals, the complainant may sue out his writ of error to the Supreme Court. That tribunal has the right to correct any mistakes which, in passing upon a Federal question, a State Court may make. No such power has been given to this Court. In so saying there is, of course, no intention of suggesting that in this case any mistake has been made.

Technically, as this is a hearing upon demurrer, this Court may not be entitled to take judicial notice of the fact that to all the cases in 111 and 115 Md. cited in this opinion the complainant was a party. The conclusions herein stated have been reached,

27 therefore, without considering whether the question as to whether a Court of Equity may interfere with these attachment proceedings and whether the evidences of debt are under the circumstances of this case attachable have been decided contrary to the contention of the complainant in a case to which he was a party and which had reference to the very attachment proceedings which he seeks here to have declared invalid.

The demurrer must be sustained. As the complainant elects to stand on his bill as originally filed, and does not wish to amend, it will be dismissed at his cost.

28 *Final Decree.*

Filed May 31, 1912.

United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,
against
SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE; AMERICAN Bonding Company of Baltimore; Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Copartners, Trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, Defendants.

Final Decree.

This cause having come on for hearing upon the demurrers filed to the bill by the American Bonding Company of Baltimore and Alexander Brown, Austin McLanahan, B. Howell Griswold, and Harman Brown Bell, copartners trading as Alexander Brown and Sons, defendants herein and the defendants Safe Deposit and Trust Company of Baltimore and Theodore P. Weis, having by leave of Court withdrawn their answers to the bill herein and joined in the demurrers to said bill, now after hearing counsel for the respective defendants in support of said demurrers and counsel for the complainant in opposition thereto and due deliberation having been had,

it is this 31 day of May, 1912, ordered, adjudged and decreed
29 that the said demurrers be and the same hereby are sustained,

And the complainant, through his counsel having elected to stand on said bill without amendment of the same, it is further ordered, adjudged and decreed that the bill of the complainant herein be, and the same hereby is finally dismissed for want of jurisdiction, and for lack of indispensable parties, i. e., the plaintiffs in the attachment cases mentioned in the bill, and that final judgment, be and the same hereby is granted in favor of the said defendants and against said complainant for the sum of Twenty-two Dollars and fifteen cents, defendants' costs of this suit.

JOHN C. ROSE,
District Judge.

30 *Petition for Appeal, Assignment of Errors, and Order of Court Allowing Appeal.*

Petition and Assignment of Errors Filed June 7, 1912.

Order of Court Filed June 12, 1912.

District Court of the United States for the District of Maryland.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant-Appellant,

against

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE; AMERICAN Bonding Company of Baltimore; Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Copartners, Trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore in the State of Maryland, Defendants-Respondents.

The above named complainant, Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Bearn and Chalais, considering himself aggrieved by the final decree entered in this cause on the 31st day of May, 1912, doth hereby appeal from said final decree to the Supreme Court of the United States and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said final decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, June 7th, 1912.

MAURICE LEON,
Solicitor for Prince of Bearn and Chalais, Complainant-Appellant.

31 And Now, to wit, on June 12, 1912, it is ordered that the appeal be allowed as prayed for, and the penalty of the appeal bond to be given for costs is hereby fixed at $500.00.

JOHN C. ROSE,
United States District Judge.

32 District Court of the United States for the District of Maryland.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant-Appellant,

against

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE; AMERICAN Bonding Company of Baltimore; Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Copartners, Trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore in the State of Maryland, Defendants-Respondents.

And now, on this 7th day of June, 1912, came the complainant, by his solicitor, Maurice Leon, and said that in the record and proceedings, decision and final decree of the United States District Court for the District of Maryland in the said suit or action there is manifest error, in this to wit:

1. That the said Court erred in sustaining the demurrers of the defendants to the bill of the complainant herein, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States, and especially of Section I. of the fourteenth amendment thereto.

2. That the said Court erred in holding and decidng that complainant was not entitled to any relief upon the bill by him filed in this cause, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I. of the fourteenth amendment thereto.

33 3. That the said Court erred in holding and deciding that the bill of complaint be dismissed, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

4. That the said Court erred in holding and deciding that upon the facts appearing on the face of the complainant's bill, the persons seeking to attach the property represented by the evidences of debt as alleged in said bill are indispensable parties to the cause, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

5. That the said Court erred in holding and deciding that upon the facts appearing on the face of the complainant's bill, the persons seeking to attach the property represented by the evidences of debt as alleged in said bill are necessary parties to the cause, thereby holding and deciding that said complainant might be deprived of his

property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

6. That the Court erred in holding and deciding that upon the face of the allegations of complainant's bill in this cause, the property of the complainant mentioned and described in said bill is subject to the prior jurisdiction of the Superior Court of Baltimore City, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

34 7. That the said Court erred in holding and deciding that upon the face of the allegations of the complainant's bill in this cause, the evidences of debt mentioned and described in the complainant's bill are subject to the prior jurisdiction of the Superior Court of Baltimore City, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

8. That said Court erred in holding and deciding that it did not have jurisdiction of the subject-matter of this cause, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

9. That said Court erred in holding and deciding that it did not have jurisdiction to decree that the complainant is entitled to secure access to the safe deposit box mentioned and described in the bill and withdraw the contents thereof, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

10. That the said Court erred in holding and deciding that the physical presence in Maryland of the evidences of debt mentioned and described in the bill filed in this cause constituted property in the State of Maryland liable to seizure and condemnation in said State by the Courts of said State, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States, and especially Section I of the fourteenth amendment thereto.

35 The contention that depriving the complainant of the property described in the bill and the evidences thereof, also described in the bill, constituted a violation of the Constitution of the United States, and especially of Section I of the fourteenth amendment thereto, was distinctly urged before said Court in paragraph numbered XIII of the bill filed by the complainant in this

cause, which said bill was finally dismissed by the decree appealed from herein.

Wherefore complainant respectfully prays that the said decree be reversed and the District Court directed to grant the complainant such relief as is prayed for by said bill.

Dated, June 7, 1912.

MAURICE LEON,
Solicitor for Complainant-Appellant.

36 *Appeal Bond.*

Filed June 7, 1912, and Approved June 12, 1912.

American Surety Company of New York.

Capital and Surplus Over $6,000,000.

District Court of the United States for the District of Maryland.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant-Appellant,

against

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Defendants-Respondents.

Know all men by these presents, That we, Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Bearn and Chalais, as Principal, and the American Surety Company of New York, a corporation, as Surety, are held and firmly bound unto the above named defendants in the sum of five hundred ($500.) dollars, to be paid to the said defendants, their executors, administrators, successors or assigns; to which payment well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 7th day of June, 1912.

Whereas, lately at a session of the District Court of the United States for the District of Maryland in the above entitled suit a decree was rendered against the above named Complainant-Appellant on the 31st day of May, 1912, and the said Complainant-Appellant above named having obtained, or being about to obtain, from said Court in open court an order allowing an appeal to the Supreme Court of the United States to reverse the decree aforesaid.

Now the condition of this obligation is such, that if the said complainant-appellant against whom said decree was rendered shall prosecute his appeal to effect, and shall answer all costs that may

be awarded against him in case he shall fail to make his
37 plea good, then this obligation to be void, otherwise to remain in full force and virtue.

AMERICAN SURETY COMPANY OF NEW YORK,
By MARSHALL L. BROWER,
Resident Vice President.

[L. S.]

Attest:

M. W. DIVINE,
Resident Assistant Secretary.
PRINCE DE BEARN ET DE CHALAIS,
By MAURICE LEON, *Sol. & Att'y.*

Approved:
JOHN C. ROSE,
District Judge.

38 STATE OF NEW YORK,
County of New York, ss:

On this 6th day of June, 1912, before me personally appeared Marshall L. Brower, Resident Vice President of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say; that he resides in The City of New York, N. Y.; that he is the Resident Vice President of the American Surety Company of New York; the Corporation described in and which executed the above instrument; that he knows the corporate seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said Corporation, and that he signed his name thereto by like order; and that the liabilities of said Corporation do not exceed its assets as ascertained in the manner provided by law. And the said Marshall L. Brower further said that he is acquainted with M. W. Divine, and knows him to be one of the Resident Assistant Secretaries of said Corporation; that the signature of said M. W. Divine subscribed to the said instrument, is in the genuine handwriting of the said M. W. Divine, and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him the said Marshall L. Brower Resident Vice President.

[L. S.]

E. A. FARRELL,
Notary Public, New York County, No. 7; Register's Office, New York County, No. 3002. Certificate filed in all Counties.

39 STATE OF NEW YORK,
County of New York, ss:

M. W. Divine being duly sworn, says: That he is a Resident Assistant Secretary of the American Surety Company of New York; that said Company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the

requirements of the laws of said State applicable to said Company, and is duly qualified to act as surety under such laws. That said Company has also duly complied with and is duly qualified to act as surety under the Act of Congress of August 13, 1894, entitled "An Act relative to recognizances, Stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said Company as rendered pursuant to section 4 of said Act of Congress; that said statement is true and that said American Surety Company of New York is worth more than $6,000,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

M. W. DIVINE.

Subscribed and sworn before me this 6th day of June, 1912.

[L. S.] E. A. FARRELL,
Notary Public, New York County, No. 7; Register's Office, New York County, No. 3002. Certificate filed in all Counties.

39½ American Surety Company of New York.

Incorporated April 14, 1884.

General Offices, 100 Broadway.

Financial Statement, March 31, 1912.

Resources.

Real Estate—			
Home Office Building and Land, unencumbered	$3,000,000.00		
N. Y. City Water Front, unencumbered	166,047.91	$3,166,047.91	
Stocks and Bonds, Market Value		4,130,151.50	
Guaranteed Mortgages		195,250.00	
Cash in Banks and Offices		662,079.31	
Premiums in Course of Collection		491,351.91	
Accrued Interest and Rents		54,307.17	$8,699,187.80

Liabilities.

Capital Stock	$2,500,000.00	
Surplus	3,904,228.54	
Reserve for Re-Insurance	1,550,949.53	
Reserve for Contingent Claims	645,339.09	
Reserve for Contingent Expenses	60,000.00	
Bills and Accounts Payable, not due	38,670.64	$8,699,187.80

40 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

The first quarterly meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Wednesday, January 17, 1912, at 12 o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York.

"GENTLEMEN: The committee appointed by the Executive Committee of this Company at their meeting held Tuesday, December 12, 1911, for the purpose of nominating officers of the Company, * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for * * *

Place.	Resident Vice-Presidents.	Resident Assistant Secretaries.
New York, N. Y.	Richard Deming	A. L. Adams
	Horace P. Hollister	Marshall L. Brower
	Marshall L. Brower	William H. Bishop
	A. E. Cotterell	Horace P. Hollister
	Henry D. King	Jared F. Harrison
		A. E. Cotterell
		M. W. Divine

* * * * * * *

"Whereupon, it was

"Resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present for the officers, members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

* * * * * * *

"The following resolution was adopted:

"Resolved, that the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

* * * * * * *

STATE OF NEW YORK,
County of New York, ss:

I, H. A. Reiss, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 19th day of January, 1912.

[L. S.] H. A. REISS,
Assistant Secretary.

41 UNITED STATES OF AMERICA, *ss:*

To Safe Deposit and Trust Company of Baltimore, American Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, copartners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the city of Baltimore, in the State of Maryland, **Greeting:**

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington within thirty days from the date hereof pursuant to appeal filed in the office of the Clerk of the District Court of the United States for the District of Maryland wherein Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Bearn and Chalais is appellant and you and each of you are respondents, and appellees to show cause if any there be, why the final decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 12th day of June in the year of our Lord one thousand nine hundred and twelve.

JOHN C. ROSE,
United States District Court Judge.

[Seal United States District Court, Maryland.]

Attest:

ARTHUR L. SPAMER,
Clerk U. S. District Court for District of Maryland.

Service of the within citation acknowledged this 21st day of June 1912.

CHARLES McH. HOWARD,
Solicitor for Safe Deposit & Trust Co. of Balto.
EDW. DUFFY,
Sol. for American Bonding Co.
WM. C. SMITH,
Solicitor for Sheriff.
CHARLES A. MARSHALL,
Solicitor for Alexander Brown & Sons of Baltimore.

42 ***Stipulation of Counsel as to Making up Transcript of Record.***

Filed June 25, 1912.

In the United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,
against
SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Copartners, Trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Defendants.

It is stipulated and agreed by and between the parties to this cause, that the transcript of record on complainant's appeal to the Supreme Court of the United States, in said case shall consist of the following, viz.:

1. Bill of Complaint,
2. Subpœna,
3. Demurrer of American Bonding Company,
4. Demurrer of Alexander Brown and Sons,
5. Demurrer of Safe Deposit and Trust Company,
6. Demurrer of Theodore P. Weis, Sheriff of the City of Baltimore,

43 7. Opinion of the Court,
8. Decree,
9. Petition for Appeal, Order of Court allowing Appeal and Assignment of Errors,
10. Appeal Bond,
11. Citation,
12. Stipulation of Counsel as to making up Transcript of Record,
13. Order to transmit record,
14. Clerk's Certificate,

and such other formal matter as is usually inserted in such transcripts.

MAURICE LEON,
Solicitor for Complainant.
CHARLES McH. HOWARD,
Solicitor for Safe Deposit and Trust Company of Baltimore.
EDW'D DUFFY,
Solicitor for American Bonding Company of Baltimore.
CHARLES A. MARSHALL,
Solicitor for Alexander Brown and Sons.
WM. C. SMITH,
Solicitor for Theodore P. Weis, Sheriff of the City of Baltimore.

44 *Order to Transmit Record.*

And thereupon, it is ordered by the court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United States, and the same is transmitted accordingly.

Test:

ARTHUR L. SPAMER, *Clerk.*

Clerk's Certificate.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, do hereby certify that the aforegoing is a true transcript of the record and proceedings of the said District Court, together with all things thereunto relating, in the therein entitled cause, made up in accordance with stipulation of counsel for the respective parties, filed in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, this 27th day of June, 1912.

[Seal United States District Court, Maryland.]

ARTHUR L. SPAMER, *Clerk.*

45 [Endorsed:] In the Supreme Court of the United States. Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Chalais, Appellant, vs. Safe Deposit & Trust Company of Baltimore, American Bonding Company of Baltimore, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Appellees. Transcript of Record.

Endorsed on cover: File No. 23,292. Maryland D. C. U. S. Term No. 301. Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Bearn and Chalais, appellant, vs. Safe Deposit and Trust Company of Baltimore, American Bonding Company of Baltimore et al. Filed July 13th, 1912. File No. 23,292.